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IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF ARIZONA

United States of America,

Plaintiff,

vs.

Michael Lacey, et al.,

Defendants.

No. CR-18-00422-PHX-SPL

**ORDER**

Before the Court is Defendant Michael Lacey's ("Lacey") Motion for Release of Funds Unrelated to Backpage and Request for Expedited Relief (Doc. 385) (the "Motion for Release of Funds") and Lacey's Motion to Strike the Government's Untimely Opposition to His Motion for Release of Funds Unrelated to Backpage and Request for Expedited Relief (Doc. 415) (the "Motion to Strike"). The Motion for Release of Funds was fully briefed on December 11, 2018. (Docs. 412, 424) The Motion to Strike was fully briefed on December 21, 2018. (Docs. 423, 426) The Court's ruling is as follows.

**I. Background**

On March 28, 2018, a federal grand jury returned a ninety-three count indictment against several Defendants, including Lacey, alleging that the Defendants engaged in various crimes related to the operation of the website Backpage.com, including conspiracy, facilitating prostitution, and money laundering. (Doc. 3) The indictment also includes forfeiture allegations.<sup>1</sup> On April 26, 2018, the U.S. District Court for the Central District

<sup>1</sup> On July 25, 2018, the grand jury returned a 100-count superseding indictment

1 of California issued seizure warrants for certain of Lacey's accounts with the Republic  
2 Bank of Arizona ending in x2485, x1897, and x3126. (Doc. 412 at 2; Doc. 385 at 1)

3 On November 16, 2018, Lacey filed the Motion for Release of Funds seeking an  
4 order from the Court providing equitable relief from the seizure warrants issued by the  
5 Central District of California. (Doc. 385) On December 3, 2018, Lacey filed a Notice of  
6 Government's Non-Opposition to the Motion for Release of Funds. (Doc. 403) On  
7 December 11, 2018, the Government filed its response to the Motion for Release of Funds  
8 (Doc. 412), and Lacey filed the Motion to Strike, citing the response as untimely. (Doc.  
9 415)

## 10 **II. Motion to Strike**

11 Lacey filed the Motion to Strike seeking to strike the Government's response to his  
12 Motion for Release of Funds because the response was filed more than fourteen days after  
13 service of the Motion for Release of Funds, as required by Local Rule of Civil Procedure  
14 7.2(c). LRCrim 12.1; (Doc. 415 at 5). In response, the Government argues that its response  
15 was timely because the Motion for Release of Funds is essentially a motion pursuant to  
16 Federal Rule of Criminal Procedure 41(g), which would allow the Government 60 days to  
17 respond. (Doc. 423 at 2)

18 The decision to grant or deny a motion to strike is within the Court's discretion.  
19 *Sunburst Minerals, LLC v. Emerald Copper Corp.*, 300 F. Supp. 3d 1056, 1059 (D. Ariz.  
20 2018); LRCiv 7.2(i) (stating that the Court may, but is not required to, dispose of the motion  
21 summarily). A court may deny a motion to strike for untimely filing upon a finding of  
22 excusable neglect. *Stewart v. Unknown Bezy*, 473 F. App'x 752, 753 (9th Cir. 2012). To  
23 determine whether a party's failure to meet a deadline constitutes excusable neglect, courts  
24 must apply a four-factor equitable test, examining: (1) the danger of prejudice to the  
25 opposing party; (2) the length of the delay and its potential impact on the proceedings; (3)  
26 the reason for the delay; and (4) whether the movant acted in good faith. *Ahanchian v.*  
27 *Xenon Pictures, Inc.*, 624 F.3d 1253, 1261 (9th Cir. 2010).

28 against the Defendants. (Doc. 230)

1           At this time, the Court declines to exercise its discretion to strike the Government's  
2 response. First, the Court does not find that the Defendant suffered any prejudice from the  
3 untimely filing, and the Defendant did not identify any prejudice in his pleadings. Second,  
4 the delay had no impact on the Court's timing in considering the Motion for Release of  
5 Funds or any potential impact on the proceedings in this case. The Court finds that the  
6 Government's reason for the untimely filing was plausible, as the Motion for Release of  
7 Funds could easily be identified as a motion pursuant to FRCP 41(g), despite the fact that  
8 the Court declines to address that issue at this time. Finally, the Court does not find any  
9 evidence that either party acted in bad faith. Accordingly, the Court finds that the  
10 Government has demonstrated excusable neglect for its untimely filing, and the Motion to  
11 Strike is denied. The Court cautions the parties that this exercise of discretion will not  
12 excuse untimely filings in the future.

### 13   **III. Motion for Release of Funds**

14           Lacey also seeks an order from the Court releasing the funds held in three bank  
15 accounts identified as "Republic Bank accounts ending in 2485, 1897, and 3126." (Doc.  
16 385 at 1) The seizure warrants freezing these accounts were issued by the Central District  
17 of California. (Doc. 424 at 6) At a hearing held on November 16, 2018, the Court declined  
18 to disrupt the seizure warrants issued by the Central District of California when similar  
19 challenges were brought by other Defendants (Docs. 360, 365, 376), and the Court found  
20 that the Defendants had a sufficient legal remedy for any challenges to the seizure warrants  
21 issued by the Central District of California in that district. (Doc. 401 at 56, 57–58, 59)

22           Lacey argues that the Court's prior Order is distinguishable from the present Motion  
23 for Release of Funds because he is not challenging the issuance, authorization or  
24 enforcement of the seizure warrants. (Doc. 424 at 6) Instead, Lacey argues that the Motion  
25 for Release of Funds is seeking equitable relief from the seizure warrants in the form of  
26 releasing the funds that are being restricted by the warrants. (Doc. 424 at 6) However,  
27 Lacey has not provided the Court with any precedent or persuasive argument for why he  
28 cannot seek the requested equitable relief in the Central District of California. Quite

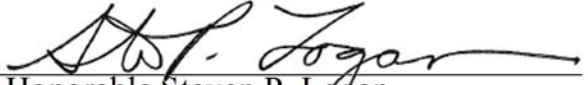
1 strangely, Lacey admits that “an Application and Motion” challenging the seizure warrants  
 2 at issue are presently being litigated before the Central District of California. (Doc. 424 at  
 3 8–9, stating “[w]hile the parties continue to litigate the Application and Motion in the  
 4 Central District of California, the government’s handling of that litigation demonstrates  
 5 that this Motion should not face the same fate . . . .”) Therefore, as discussed in the Court’s  
 6 previous Order, the Court finds that any legal or equitable relief from the warrants issued  
 7 by the Central District of California is properly sought in that district.<sup>2</sup> The Court declines  
 8 to exercise its jurisdiction to provide equitable relief from seizure warrants issued by  
 9 another court where the Defendant is able to seek relief from the rendering court.<sup>3</sup>

10 Accordingly,

11 **IT IS ORDERED** that Defendant’s Motion for Release of Funds Unrelated to  
 12 Backpage and Request for Expedited Relief (Doc. 385) is **denied**; and

13 **IT IS FURTHER ORDERED** that Defendant’s Motion to Strike the Government’s  
 14 Untimely Opposition to His Motion for Release of Funds Unrelated to Backpage and  
 15 Request for Expedited Relief (Doc. 415) is **denied**.

16 Dated this 24th day of January, 2019.

17   
 18 Honorable Steven P. Logan  
 19 United States District Judge  
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24 <sup>2</sup>It is well settled that a court should rarely interfere with the order of another court, as any  
 25 such interference usurps the power of the rendering court. Although courts have held that justice  
 26 may occasionally demand this type of interference, the identification of those rare situations is  
 27 committed to the sound discretion of the district court. *Ord v. United States*, 8 F. App’x 852 (9th  
 28 Cir. 2001); *Treadaway v. Acad. of Motion Picture Arts & Scis.*, 783 F.2d 1418 (9th Cir. 1986).

<sup>3</sup> The Ninth Circuit Court of Appeals has held that considerations of comity and orderly  
 administration of justice demand that the non-rendering court should decline jurisdiction of an  
 action and remand parties for their relief to the rendering court. *Delson Grp., Inc. v. GSM Ass’n*,  
 570 F. App’x 690 (9th Cir. 2014).